

LEGAL REPRESENTATIVES OF GEORGE W. SOULE.

FEBRUARY 18, 1904.—Ordered to be printed.

Mr. BURNHAM, from the Committee on Claims, submitted the following

REPORT.

[To accompany S. 559.]

The Committee on Claims, to whom was referred the bill (S. 559) for the relief of the legal representatives of George W. Soule, have given the same a careful consideration and beg leave to submit the following report:

The material facts upon which this claim is based have been shown by statements under oath and by letters and other evidence specifically referred to.

George W. Soule, of whose last will and testament Ephraim Hunt and Julia M. Hunt are the executors, was in 1850 a citizen of New York in good circumstances and of high standing in his business and social relations. Early in 1851 he went to San Francisco, Cal., and was one of the pioneers in that locality. Large tracts of land within the limits of that city, partly above the high-water mark of the bay of San Francisco and partly between high and low water mark were then unoccupied. The title to much of this land was unknown and was not ascertained until some years after, when it was determined by legislation and the decisions of the courts.

Many of the early settlers took possession of this land without a title and erected thereon houses and business blocks, and thus laid the foundations of a part of the city. In no other way could the city have been so rapidly built up. To have waited until titles could be ascertained and secured would have resulted in long delay and a hindrance to the growth of the city.

The possessory rights thus obtained were generally confirmed and the payments, if any were made, were only nominal.

By an ordinance known as the Van Ness ordinance, approved June 20, 1855, and thereafter duly ratified, the city of San Francisco gave full title to those who had such rights. The material parts of this ordinance were as follows:

SEC. 2. The city of San Francisco hereby relinquishes and grants all the right and claim of the city to the lands within the corporate limits, to the parties in the actual possession thereof, by themselves or tenants, on or before the 1st day of January,

A. D. 1855, and to their heirs and assigns forever * * * *Provided*, Such possession has been continued up to the time of the introduction of this ordinance in the common council; or, if interrupted by an intruder or trespasser, has been or may be recovered by legal process.

Mr. Soule took possession early in 1851 of one of these unoccupied lots of land. It was a lot 275 feet square and was bounded north by Jackson street, east by Battery street, south by Washington street, and west by Sansome street.

Much the greater part of this lot, but probably not all of it, was tide land between high and low watermark.

In June, July, and August, 1851, Mr. Soule erected on the easterly side of this lot six stores, fronting for a distance of 125 feet on Jackson street, at an expense of \$31,500.

While erecting these stores, or soon after their completion, in the same year, he obtained an alcalde grant, as it was called, and also sundry other conveyances in the usual form from different grantors for different parts of said real estate, but it does not appear that any of these grantors, other than the alcalde, had a title to any of the land which their deeds purported to convey or any authority to make such conveyances. Mr. Soule states that the parties from whom he received these deeds said they owned the property and he gives that as the reason for his obtaining these conveyances.

Mr. Soule continued in undisturbed and peaceable possession of this property and collected the rents from his six stores, which amounted to \$1,800 a month, until he was dispossessed as hereinafter stated. He held all the title he was then able to secure and his possession and rights were no different from those of all others who claimed and possessed land in that vicinity.

He occupied this land and erected his six stores thereon in good faith and with a reasonable expectation that what was wanting in his title he would be able to secure whenever it was ascertained and determined by the courts or by legislation who were in fact the legal owners of the land.

He paid taxes to the city of San Francisco, doubtless assessed on account of this lot, and the city in this way recognized his interest in the property.

Mr. Soule was in the full enjoyment of his property and of the rents derived therefrom, with no one, so far as he knew, claiming a better title, when in the month of September, 1852, he was ousted by the Government of the United States. The facts relating to this seizure by the Government are stated, as follows, in the opinion of the Court of Claims filed June 6, 1892, when, this claim having been presented and heard, it was determined that the court had no jurisdiction:

III. That in the month of September, 1852, T. Butler King, at that time collector of customs at the port of San Francisco, notified the claimant that the Government of the United States, by its proper officers, had decided to erect a custom-house on said premises and, without apparent authority, demanded of claimant the possession of said premises and improvements; that thereupon claimant refused to deliver possession of said premises so demanded, whereupon said King, collector as aforesaid, notified the claimant that he would take possession of said premises and improvements and at the same time advised and counseled said claimant to deliver to him, said King, collector as aforesaid, under protest, the possession of said premises and sue the collector; that Congress had appropriated and would appropriate money to pay property owners for property taken upon which to erect a custom-house, and thereupon the said claimant delivered to said King, collector as aforesaid, a protest of some kind in writing, and without removing or attempting to remove said stores he had erected thereon, yielded possession of said premises.

It appears from the finding and from other evidence that Mr. Soule, relying upon the advice and counsel of the collector, a high Government official, and upon the statement that Congress had appropriated and would appropriate money to pay property owners for property taken upon which to erect a custom-house, yielded up to this collector possession of the entire lot of land and the buildings he had erected thereon.

Thus the Government, through its collector of customs, without the shadow of a claim to this property, without legal proceedings of condemnation, and without compensation of any kind, compelled him to surrender the possession of this property.

It is true that Mr. Soule might have refused to deliver up possession to the Government, but he relied, as other men would under the same circumstances, upon the assurances of this Government official.

He filed a protest in writing, as advised, and doubtless believed that out of the money which the collector informed him had been or would be appropriated by Congress for this purpose he would be fully compensated.

This property was taken by the Government for its own use as a site for a custom-house, and not by the State of California or the city of San Francisco, and so this claim is made against the Government.

The custom-house was erected upon the lot of land which had been, as above stated, in the possession of Mr. Soule and has remained there to this date. His buildings were taken down and removed by the Government and he was thus deprived of land, the title to which in all probability would have been confirmed to him, and of buildings from which he was then deriving a very substantial income.

The Government had no legal title whatever to this land until two years after, on the 5th of September, 1854, when it obtained a deed from the State of California—a deed which conveyed the use of this land as a site for a custom-house—with a reversion to the State whenever it ceased to be used for that purpose. The full title, so far as the State could give a title, was not obtained by the United States until a second deed was given by the State on the 1st day of May, 1868.

The Government, while neglecting to make any provision for payment to Mr. Soule, did recognize and admit the existence of these possessory rights by the act of August 4, 1854. (10 Stat. L., 559). By that act \$10,000 was appropriated for the extinguishment of two private claims to the possession of a small part of the Soule land. These two claimants, Lyons and Hastings, could have had no greater right or better title than Soule, yet the Government paid to each of them the sum of \$5,000. Neither had made any improvements on their water lots nor was either in possession of any part of the Soule lot when Soule commenced his occupation and the erection of his buildings.

The facts in regard to this payment by the Government are stated in the following letter from the Acting Secretary of the Treasury, Hon. O. L. Spaulding, to Hon. Henry W. Blair, dated February 19, 1902:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., February 19, 1902.

SIR: In reply to your letter of the 24th ultimo, relative to any payments made to individuals in connection with the custom-house site in San Francisco, I have the honor to advise you as follows:

By the act of August 4, 1854 (10 Stat. L., p. 559), the sum of \$10,000 was appropriated for the extinguishment of private claims to the possession of the custom-house lot in San Francisco, and the Auditor for the Treasury Department, to whom the matter

was referred for report as to the disbursement of the above-named sum, reports, under date of February 18, 1902, as follows:

The \$10,000 in question was disbursed as follows: \$5,000 was paid to Henry A. Lyons for relinquishment of all his right, title, and interest in and to water lot No. 78, and \$5,000 was paid to S. C. Hastings for relinquishment of all his right, title, and interest in and to water lot No. 79. The two lots in question formed part of the block on which the custom-house at San Francisco, Cal., was then (1854) being built. Deeds to said lots were recorded in the office of the recorder of San Francisco County, sent to this Office November 14, 1854, and transmitted to the First Comptroller December 11, 1854.

Respectfully,

O. L. SPAULDING,
Acting Secretary.

HON. HENRY W. BLAIR,
213 East Capitol Street, Washington, D. C.

A claim for damages amounting to \$133,200 was presented to the Forty-eighth Congress, which claim included the cost of the buildings—\$31,500—and the title of the land on which the same were standing. An adverse report from the Committee on Claims of the House was submitted at that time.

A letter from the Secretary of the Treasury, dated February 28, 1884, annexed as a part of that report, states that no reference to Mr. Soule's claim is found in the accounts, records, or correspondence of the Department.

The House report seems to have been based on the fact that Mr. Soule did not prove any title to the premises.

This claim was again presented to the House of Representatives in the Forty-ninth Congress, but no action was taken from the fact that during that Congress an act was passed giving enlarged jurisdiction to the Court of Claims, and it was believed by the claimant that, under its increased powers, the court would have jurisdiction of his claim. In due time the claim was presented to the court which, after a hearing in the case, known as No. 15702, returned a finding of facts June 6, 1892, but decided, as a conclusion of law upon those facts, that it had no jurisdiction of the claimant's action. The petition was accordingly dismissed.

This conclusion was upon the ground that the action was not based upon a contract but was an action sounding in tort, and therefore not within the jurisdiction of the court.

An appeal was taken but was not prosecuted on account of the inability of the claimant's executors, the claimant having previously died, to provide the means and procure the evidence for its further prosecution.

There were no other proceedings in this matter until a bill was presented to the Fifty-seventh Congress, but no action was taken in that Congress. In the present Congress bills have been presented both in the Senate and House in favor of the claimants.

The Government, at the time it took possession of Soule's land and buildings, had no title whatever and no right, by condemnation proceedings or otherwise, to oust Soul from his possession. He was until then in the undisturbed occupation of this land and the buildings he had erected thereon. For sixteen months he had held possession and his right to continue peaceable occupation was good except against one who had a better title. This superior right the Government did not have.

The advantage to the Government by its ejection of Mr. Soule was very considerable. It obtained immediate possession and avoided the

expense and delay of legal proceedings. It also secured the property for much less than its real value.

It was decided by the courts that the State of California held the title to tide lands between high and low water mark. A considerable part, but perhaps not all, of the Soule land was between these marks, and when, two years after the Government took possession of this land, it was decided to purchase this tide land from the State, agents agreed upon by both parties reported the value of the land to be \$300,000. The Government paid the State, upon the grant of the use and occupation of this land, as above stated, September 5, 1854, only the sum of \$150,000. At a subsequent date, May 1, 1868, the Government paid the State another \$150,000 for all the right, title, and interest of the State in and to the land in question. In the meantime the property had greatly increased in value and the total amount paid by the Government was much less than the real value of the property.

The loss to Mr. Soule by this eviction on the part of the Government was very large in amount, and the consequences of this action were ruinous to the financial interests of the claimant and his family.

Directly he lost the full amount of the cost of his buildings which by conclusive evidence is shown to have been \$31,500. In addition he lost the rents of the buildings which at that time amounted to \$21,600 a year. If he had remained in possession of these buildings during the two years between the taking by the Government and its securing a title from the State on the 5th of September, 1854, he would have received from that source of income \$43,200.

If the Government had taken the usual means of securing title to the property under the right of eminent domain, there would have been the long delays incident to such proceedings, and during that time Mr. Soule would have been in possession, and in all probability would have received a large amount from the rentals of these buildings; and if he had not been dispossessed by the Government he would have been, so far as his interests in this property were concerned, in no different position from that of a large number who took possession of land in San Francisco, as he did, and whose titles were confirmed to them by the Van Ness ordinance.

The loss to him on this account may be said to be conjectural; but no reason is suggested why he, if undisturbed by the Government, would not have shared in the benefits of this confirmation of title as did many, and perhaps all others who had taken possession of land, as he did, in that new and rapidly growing city. The amount of damages he thus sustained would be difficult to estimate; but some impression may be gained from the amount actually paid by the Government for the title of the State.

The committee has considered the question of delay in the prosecution of this claim.

It has been judicially settled by the decision of the Court of Claims, above referred to, that there has never been any remedy for Mr. Soule except through action of Congress.

It appears from the letter of Ephraim Hunt, one of the executors of his will, to Hon. Henry W. Blair, dated November 30, 1902, a copy of which is hereto annexed and marked "Exhibit A," that soon after the Government seized his property Mr. Soule was prostrated by a severe illness and was carried on a stretcher aboard a steamer which brought him home. Some time in 1853, against the advice of his phy-

sician, he returned to look after his affairs and remained until January, 1855. Again he suffered from illness and for several years his health was completely broken.

In the meantime his witnesses had gone, a change of administration had brought into office a new collector and other new officials, and a little later the former collector, Mr. King, died.

In December, 1852, Mr. Soule put all the papers relating to this property, including his deeds and a copy of the protest delivered to Collector King, into the hands of Mr. James E. Wainwright, and when he returned, in 1853, he learned that Mr. Wainwright had gone to Japan and was dead. Mr. Soule was never able to find any of these papers.

Some time during the sixties he began to search for his witnesses, but he was still in poor health and but little, if anything, was accomplished.

The civil war and the difficulties to be overcome, arising in part from the long distance across the continent and the expense and delay of communication before the building of a transcontinental railroad, his continued ill health, and want of means may account for his not prosecuting the claim during a considerable period after the loss of his property.

He had become impoverished, and from 1872 until his death was in the care of Mr. and Mrs. Hunt, the executors, either in their own home or elsewhere.

It appears from a letter written by Mr. Hunt to Hon. Henry W. Blair, dated November 23, 1903, a copy of which is hereto annexed and marked Exhibit B, that it was not until the seventies that he had succeeded in getting together some of the papers to establish his claim.

He was then, as this letter states, "sick again, to death's door, given over by the doctors, pronounced incurable." His disease would naturally result as therein stated in his being "completely broken in health and spirit."

He, however, partially recovered and, in 1881, secured the assistance of counsel and presented his claim to Congress.

The effort to secure favorable action upon this claim appears to have been continuous from that time up to the date of the decision of the Court of Claims, June 6, 1892.

An appeal was taken from this decision, but was not prosecuted from lack of means. Mr. Soule had died before the decision was filed, the papers were again lost through no fault of the executors; two agents, or attorneys, upon whom they relied, one in Washington, D. C., and another in Lebanon, N. H., had died, and the executors were without means. They afterwards were enabled to secure other assistance, and presented their claim to the Fifty-seventh Congress.

The facts last stated appear in a letter from Mr. Hunt to Hon. Henry W. Blair, dated January 2, 1903, a copy of which is hereto annexed, and marked "Exhibit C."

The committee finds, under the circumstances that have appeared in this case, that there have not been such laches or neglect on the part of Mr. Soule or his executors as to justify a denial of the claim upon that ground.

The State of California owned the tide land, as above stated, and conveyed that part of the land in question to the Government, but it is claimed by the counsel for Mr. and Mrs. Hunt that a strip of land bordering on Jackson street was above high-water mark and that

this strip was never conveyed to the Government but now belongs of right to the heirs of Mr. Soule under his alcalde grant.

The bill as amended provides that the payment of the sum herein-after named shall be in full discharge of all claims against the United States of any description in favor of said Soule, his heirs and legal representatives.

In view of the possible claim that might be made to a part of the land in question and in view of the great advantage the Government has derived from its unauthorized act in taking possession of the property and of the great and irreparable loss to Mr. Soule, his heirs, and legal representatives, occasioned by this act, the committee has found that the claimants should be paid the sum of \$31,500.

The taking of this property by the Government without legal right, the great equities in the case in favor of the claimants, and the serious results to the claimant and his family, by which they have become impoverished and deprived of the means of more seasonably prosecuting their claim, would seem to justify the payment of a much larger amount than is allowed by the amended bill.

The committee, however, after a careful consideration of the evidence and of all the circumstances surrounding the claim, have concluded to eliminate all that part of the claim which might be regarded as uncertain or too remote, and have allowed only the amount that has been clearly established as the cost of the buildings which the Government took from Mr. Soule and destroyed, and for which no compensation was ever made.

The committee therefore recommend the passage of the bill when amended as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Ephraim Hunt and Julia M. Hunt, executors of the last will and testament of George W. Soule, deceased, the sum of thirty-one thousand five hundred dollars, for loss and damage sustained by said George W. Soule by reason of the seizure and appropriation, against his protest, for public purposes, by the collector of customs of San Francisco, California, in the year eighteen hundred and fifty-two, in the erection of the custom-house of the United States, of six stores, the property of said Soule, situate upon a certain square of land in the city of San Francisco, by him then occupied under claim of title, and being the same land whereon said custom-house was erected, said sum of thirty-one thousand five hundred dollars being the cost to said Soule of the erection of said stores in the year eighteen hundred and fifty-one; and said sum of money shall be in full payment and discharge of all claims of every description whatever on behalf of the estate of said George W. Soule, his heirs and legal representatives, against the United States.

SEC. 2. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of thirty-one thousand five hundred dollars for the purposes specified in this act.

EXHIBIT A.

GRAFTON CENTER, N. H., *November 30, 1902.*

MY DEAR SIR: Mr. Soule went to California late in 1849 and was an importer direct from the producers of French wines and brandies.

That is why he had to do with T. Butler King, collector of the port, and whom he had previously known. He had prospered, and, having erected his stores on unoccupied land, supposed he had all the rights of "the squatter," and, with his rents and his own business, was on the high road to great wealth, as he supposed.

But when the Government seized his stores, reduced in strength from a robust

health, he was prostrated by the loss of his income, and, given over by the doctors, was carried on a stretcher hastily aboard a steamer just ready to sail, without "bag or baggage."

His sickness extended far into 1853, but, improving somewhat, he ventured to return to look after his affairs against the advice of doctors and friends. He remained until January, 1855, having been absent one year and three months, or thereabouts.

Ill health and great anxiety about his unsettled affairs in San Francisco brought back his illness, complicated with diseases incident to change of climate and crossing the Isthmus, and his health was completely broken for several years.

His other business affairs and the scattering of all his tenants to the four quarters of the globe made it impossible to touch his claim against the Government. As he thought that was so just and clear a case, he attended as far as he was able to his other affairs.

Meantime his own baggage, left at San Francisco, and also Collector King's had both gone astray to Honolulu or Australia, or nobody ever knew where.

Mr. King's death about the same time still further embarrassed the case, and it was not until the sixties that he rallied enough to begin the search for his witnesses (tenants), who were speculators—here to-day and in Australia or China to-morrow. The seizure of the stores had scattered them.

He started to recover his claim from the Government before he had recovered his health and finances. During his long sickness my wife's property sustained himself and family.

From 1872 until his death they were in our care, either in our own house or in a rent provided by us.

All through his life he had the most abiding faith that the Government would finally do him justice and pay him for the stores and land.

And on the last day of his life he said to my wife: "I shall not get it, but you will—it is yours, and you deserve it."

I can say no more and only this, because it was so well known to members of the family.

Yours, truly,

E. HUNT.

Hon. H. W. BLAIR:

If you and Mr. Currier think best for Mrs. Hunt to go to Washington, she might be able to get enough or half enough to start.

E. H.

EXHIBIT B.

UNION VILLAGE, Vt., November 23, 1903.

DEAR SIR: Am in receipt of yours of the 18th. I should like, of course, to come to Washington, but absolutely have no money to enable me to do so.

Have income of barely 65 cents a day for five (5) persons.

In your clear statement of the case you have relied upon the "argumentum ad judicium." That is right. As to the age of the claim some, two or three years ago Congress allowed a claim for "property destroyed" one hundred and one years before to the very remote heirs of George Washington.

Our claim is for property still in existence, and of increased value, and a squatter's right is "adscriptus glebae" and never dies, and Senator Hoar as a profound and learned jurist knows this.

You say, Why delay of thirty years? There was no such delay. As has been said, Mr. Soule returned to California against advice of doctors and came home in 1853 and had a long sickness of several years, and was not able to attend to business affairs until 1861, and then a four years' war, from a kind of inherited patriotism, delayed any demand upon the Government, overburdened with expenses, and not until the seventies had he succeeded in getting together some of the papers to establish his claim.

He was then sick again, to death's door, given over by the doctors, pronounced incurable—trouble with bladder and kidneys—had to use the catheter for twenty years, last five or six by the aid of physician. As one can see, he was completely broken in health and spirit.

But after resting three years in Reading at my expense, he rallied and again tried to earn something to support his family and at the same time prepare his claim, and, like "Duos qui sequitur lepores, neutrum capit," he at last, in 1881, decided he would

call counsel to his aid, but did not get a full hearing until 1886, as you have set forth.

So that really there was only forced delay until now, for after 1892 we were without papers, waiting, as he had done, to secure the evidence, Governor Boutwell having lost the papers, and we did not have means to carry on the case, further embarrassed by my entire lack of business ability.

Senator Hoar, with his broad knowledge of human affairs, will not fail to see how matters would be forced to drift with a man completely broken in health and leaning for assistance upon one who could only aid him to live and support his family, but of no business capacity to assist him. Indeed, he seemed to feel that all he would have to do was to present his case to the Government and it would at once be adjusted—it was so clear and strong.

The strange combination of accidents and misfortunes, causing so much delay in presenting the claim, make a modern romance of facts stranger than fiction.

I have your answer to letter I sent yesterday.

Yours, truly,

E. HUNT.

Hon. H. W. BLAIR.

EXHIBIT C.

GRAFTON CENTER, N. H., *January 2, 1903.*

MY DEAR SIR: Mrs. Hunt reminds me I forgot to tell you a quite important fact. After Governor Boutwell had closed his Washington office and we had decided to take the claim to Congress, from lack of funds to prosecute it in Supreme Court, to which governor appealed it on his own motion, and said he thought he could win it, Mrs. Hunt went to him to get the papers in the case, and he told her that in moving from Washington to Groton two boxes of books and papers were lost, and in them were the Soule papers, and if he ever found them he would send them to her. (Not yet done.)

This he told her in his son's office in Boston. Here was another loss of papers, and by an ex-secretary and governor, only in transit from Washington to Massachusetts. Was not this discouraging? Was it not more wonderful than the loss of the original papers by King and Soule, when their baggage went astray to Honolulu and Australia, when transportation was more risky?

Well, we waited in hopes to receive the papers, but have not.

Then we must do the best we could—of course with no papers we could present no case to anyone.

Well, we had some correspondence with a Washington firm of agents, on recommendation of a friend, Stienberger & Co., or something of that kind, I forget name, but the principal died and firm dissolved.

Then we got what papers we could find, and Mr. Spring, of Lebanon, whom you must have known, was to take the case, and he copied the records of the Court of Claims, which I forwarded to you at the outset, and, as you know, he too died, and we were again afloat.

We had notice that Mr. Currier would be elected, and knowing his ability we waited and deemed ourselves fortunate to secure your aid in the case.

So you see how we have had to work for ten years and wait.

Hoping you will now be successful, I am,

Yours, truly,

E. HUNT.

Hon. H. W. BLAIR.

